

## REMARKS

Reconsideration and allowance are respectfully requested.

Claims 1 and 5-10 are pending.

### Remarks Regarding Claim Amendments

The amendments are fully supported by the original disclosure and original claims and, thus, no new matter is added by their entry. For example, typographical errors and other informalities are corrected, redundancies are eliminated, and clarity is improved in the claims. Entry of the Claim Amendments is requested.

### Remarks Regarding Section 112

Claim 1 and 5-10 stand rejected under 35 U.S.C. 112 second paragraph as allegedly indefinite. Specifically, the Office Action alleged that claim 1 is indefinite for the phrase “and optionally further purified.” Further, claims 5-10 are allegedly indefinite for depending on an indefinite claim - claim 1. Applicants traverse.

The Examiner has indicated that claim 1 would not be rejected as indefinite if it is amended to replace the allegedly indefinite term with “optionally further purifying the.” See, Office Action, section 3. Applicants thank the Examiner for the suggestion. In an effort to expedite prosecution and without addressing the merits of the rejection, Applicants have amended claim 1 in the manner suggested by the Examiner.

For the reasons stated above, the claims as amended according to the Examiner's suggestion are no longer indefinite and withdrawal of this rejection is requested.

### Remarks Regarding Section 103

A claimed invention is unpatentable if the differences between it and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art. *In re Kahn*, 78 USPQ2d 1329, 1334 (Fed. Cir. 2006) citing *Graham v. John Deere*, 148 USPQ 459 (1966). The *Graham* analysis needs to be made explicitly. *KSR v. Teleflex*, 82 USPQ2d 1385, 1396

(2007). It requires findings of fact and a rational basis for combining the prior art disclosures to produce the claimed invention. See *id.* (“Often, it will be necessary for a court to look to interrelated teachings of multiple patents . . . and the background knowledge possessed by a person having ordinary skill in the art, all in order to determine whether there was an apparent reason to combine the known elements in the fashion claimed by the patent at issue”). The use of hindsight reasoning is impermissible. See *id.* at 1397 (“A factfinder should be aware, of course, of the distortion caused by hindsight bias and must be cautious of arguments reliant upon *ex post* reasoning”). Thus, a *prima facie* case under Section 103(a) requires “some rationale, articulation, or reasoned basis to explain why the conclusion of obviousness is correct.” *Kahn* at 1335; see *KSR* at 1396.

Claims 1 and 5-10 stand rejected under 35 U.S.C. 103 as allegedly obvious in view of a combination of Yin (U.S. 4,935,359), Stoddard (U.S. 6,316,231), Sugisawa (Biosci. Biotechnol. Biochem., 2005, 69:659-662), Urbance (Int. J. of Systematic and Evolutionary Microbiology, 2001, 51:1059-70); NCBI (Taxonomy browser for *Ketogulonicigenium vulgare*) and Azakura (Biosci. Biotechnol. Biochem., 1999, 63:46-53). Applicants traverse.

The claimed invention, as amended and as recited in claim 1, is directed to the production of vitamin C using a microorganism belonging to the genus *Ketogulonicigenium*. In contrast to the claimed invention, Yin refers only to the use of a mixture of two organisms: (1) *G. oxydans* and (2) *B. megaterium*. See, Yin, abstract, Example, and throughout the patent. Yin does not teach the use of only an organism of the genus *Ketogulonicigenium*. *B. megaterium*, the second organism used by Lin, is not a microorganism belonging to the genus *Ketogulonicigenium*. Since the pending claims, as amended in the present Amendment, are directed to the use of the use of *Ketogulonicigenium* only and Yin uses only a mixture of organisms one of which is not *Ketogulonicigenium*, the claimed invention cannot be obvious in view of Lin.

The addition of the other references (Stoddard, Sugisawa, Urbance, NCBI and Azakura) do not cure the defects of Yin because none of these references, by themselves or in

combination with Yin, or in any combination, disclose the use of only *Ketogulonicigenium* for the production of vitamin C.

Applicants submit that these features of their claimed invention are sufficient to distinguish over the cited documents so any other incorrect allegations about their disclosures are not disputed here, but the opportunity to dispute them in the future is reserved. Withdrawal of the Section 103 rejections is requested because the claims would not have been obvious to one of ordinary skill in the art when this invention was made.

*Conclusion*

Having fully responded to the pending Office Action, Applicants submit that the claims are in condition for allowance and earnestly solicit an early Notice to that effect. The Examiner is invited to contact the undersigned if additional information is required.

Respectfully submitted,

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